

866h-1

**LEGAL SERVICES AGREEMENT WITH
KANE, BALLMER & BERKMAN FOR
TRANSACTIONAL/SPECIAL COUNSEL REPRESENTATION**

THIS LEGAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 31 day of October, 2011 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city ("City"), and Kane, Ballmer & Berkman, a law corporation ("Law Firm"), whose address is 515 South Figueroa Street, Suite 1850, Los Angeles, California 90071 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Law Firm to provide representational, transactional, litigation, and other legal services to City ("Legal Service(s)").
- C. Law Firm possesses the skill, experience, ability, background, certification and knowledge to provide the Legal Services described in this Agreement.
- D. City has solicited and received a proposal from Law Firm, has reviewed the previous experience and evaluated the expertise of Law Firm, and desires to retain Law Firm to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term shall be for an unlimited duration to commence upon the Effective Date of this Agreement, unless terminated earlier as set forth herein. Time is of the essence in the performance of Legal Services under this Agreement.

2. SCOPE OF SERVICES

Law Firm shall provide Legal Services to City on an as-needed basis. The Responsible Attorney (as defined in Section 5) shall send a written request to Law Firm for each matter the City desires legal assistance with from Law Firm. The written request may specify the type of Legal Service desired from Law Firm, a not to exceed dollar amount, a completion date, and any other matter deemed necessary by the Responsible Attorney.

3. RESPONSIBILITIES OF LAW FIRM AND CITY

3.1 Responsibilities of Law Firm. Law Firm will perform the Legal Services called for under this Agreement, keep City informed of progress and developments in this matter, and respond promptly to City's inquiries and communications. City is retaining Law Firm, not any particular attorney, and the Legal Services to be provided will not necessarily be performed by any particular attorney, but the services will be supervised principally by Susan Yount Apy, Esq. ("Lead Attorney").

3.1.1 Law Firm shall not remove or reassign the Lead Attorney or any personnel listed in Exhibit "A" or assign any new or replacement personnel for the Legal Services without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

3.1.2 Law Firm, at the sole discretion of City, shall remove from the Legal Services any of its personnel assigned to the performance of the Legal Services upon written request of City. Law Firm warrants that it will continuously furnish the necessary personnel to complete the Legal Services in a timely manner as contemplated by this Agreement.

3.2 Responsibilities of City. City will be truthful and cooperative with Law Firm, keep Law Firm informed of developments and timely make any payments required by this Agreement. City shall provide access to, and upon request of Law Firm, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Law Firm's work schedule.

4. LEGAL FEES AND BILLING PRACTICES

4.1 Time and Expense. City shall pay Law Firm for the Legal Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section, the written request provided in accordance with Section 2, the Schedule of Billing Rates attached hereto as Exhibit "A" and incorporated herein by reference, and the Outside Counsel Billing Guidelines attached hereto as Exhibit "B" and incorporated herein by reference. Law Firm's compensation for all Legal Services performed in accordance with a written request provided in Section 2, including all reimbursable items and Law Firm fees, shall not exceed the dollar amount provided in the written request without prior written authorization from City. The Responsible Attorney (as defined in Section 5 below) may increase the total dollar amount authorized within a written request provided the Responsible Attorney informs the City Council of expenses that exceed One Hundred and Twenty Thousand Dollars and no/100 (\$120,000) on a quarterly basis in accordance with City Council Policy F-14.

4.2 Case Evaluation. If requested by City, upon assignment of a new matter to the Law Firm by the City, Law Firm shall complete and submit for approval to the City's Responsible Attorney the New Case Evaluation memorandum within seven (7) business days of a new assignment. Additionally, on a quarterly basis, the Law Firm shall provide

quarterly status reports to the Responsible Attorney, as is further outlined in the Billing Guidelines, attached hereto as Exhibit "B."

4.3 Costs. City shall reimburse Law Firm only for those costs or expenses specifically approved in this Agreement, or specifically approved in writing in advance by City in a written request. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Law Firm: reproduction costs, facsimile charges, long distance telephone charges, postage, investigation costs, expert witness fees, process service fees, jury fees, certification expenses, court and deposition reporter and transcript expenses, document filing fees, messenger charges, overnight delivery charges and travel expenses. City will not reimburse Law Firm for electronic database research charges (e.g., Westlaw, Lexis, etc.) unless such charges are approved in advance by City in writing.

4.3.1 All costs and expenses will be charged at the Law Firm's actual cost, except for those items which the Law Firm must, out of necessity, approximate, and those will be charged as near to their actual cost as possible. Law Firm is not obligated to pay or advance any costs or expenses, and may, at its sole option, (1) advance the cost on behalf of City and seek reimbursement from City, (2) arrange to have the cost billed directly to City, or (3) require City advance payment for the cost item(s). However, the Law Firm shall obtain City's prior consent before incurring any cost item in excess of Two Hundred and Fifty Dollars and no/100 (\$250) and costs in excess of Two Hundred and Fifty Dollars and no/100 (\$250) may be forwarded directly to the City for payment directly by the City.

4.4 Billing and Payments. Law Firm shall submit monthly invoices to City describing the Legal Services performed the preceding month. Law Firm's bills shall include the name of the person who performed the Legal Services, a brief description of the Legal Services performed, the date the Legal Services were performed, the time spent on all Legal Services billed at 0.1 hour (6 minute) increments, and a description of any reimbursable expenditures. City shall pay Law Firm no later than thirty (30) days after approval of the monthly invoice by City staff.

4.5 Extra Work. Law Firm shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Legal Services that are determined by City to be necessary for the proper completion of the Legal Services assigned but which is not included within the Litigation Cost Plan Estimate, and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit "A." City must approve in writing any billing rate changes during the term of this Agreement prior to their implementation. Billing rates may only be changed once per calendar year and only after the first year of this Agreement. City shall be provided with ninety days (90) days notice of any proposed billing rate changes during the term of this Agreement.

4.6 Outside Counsel Billing Guidelines. All further billing guidelines are outlined in the guidelines set forth in Exhibit "B."

5. ADMINISTRATION

This Agreement will be administered by the City Attorney's Office. The City Attorney or his designee shall be the Responsible Attorney and shall have the authority to act for City under this Agreement. The Responsible Attorney or his authorized representative shall represent City in all matters pertaining to the Legal Services to be rendered pursuant to this Agreement.

6. STANDARD OF CARE

6.1 All of the Legal Services shall be performed by Law Firm or under Law Firm's supervision. Law Firm represents that it possesses the professional and technical personnel required to perform the Legal Services required by this Agreement, and that it will perform all Legal Services in a manner commensurate with community professional standards. All Legal Services shall be performed by qualified and experienced personnel who are not employed by City, nor have any independent contractual relationship with City. By delivery of completed Legal Services, in the form of pleadings, legal opinions, correspondence, *etc.*, Law Firm certifies that the Legal Services conform to the requirements of this Agreement and all applicable federal, state and local laws and the community professional standard of care.

6.2 Law Firm represents and warrants to City that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Law Firm to practice its profession. Law Firm shall maintain a City of Newport Beach business license during the term of this Agreement.

7. HOLD HARMLESS

7.1 To the fullest extent permitted by law, Law Firm shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any work performed or Legal Services provided under this Agreement including, without limitation, defects in workmanship or materials or Law Firm's presence or activities conducted on the Legal Services (including the negligent and/or willful acts, errors and/or omissions of Law Firm, its principals, officers, agents, employees, vendors, suppliers, Law Firms, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them), when it has been established that Law Firm has breached any contractual obligation set forth herein, committed professional negligence or other professional misconduct.

7.2 Notwithstanding the foregoing, nothing herein shall be construed to require Law Firm to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Law Firm.

8. INDEPENDENT CONTRACTOR

It is understood that City retains Law Firm on an independent contractor basis and Law Firm is not an agent or employee of City. The manner and means of conducting the Legal Services are under the control of Law Firm, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Law Firm or any of Law Firm's employees or agents, to be the agents or employees of City. Law Firm shall have the responsibility for and control over the means of performing the Legal Services, provided that Law Firm is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Law Firm as to the details of the performance or to exercise a measure of control over Law Firm shall mean only that Law Firm shall follow the desires of City with respect to the results of the Legal Services.

9. COOPERATION

Law Firm agrees to work closely and cooperate fully with the City's designated Responsible Attorney. City agrees to cooperate with the Law Firm on the Legal Services.

10. CITY POLICY

Law Firm shall discuss and review all matters relating to policy and Legal Services direction with the Responsible Attorney in advance of all critical decision points in order to ensure the Legal Services proceed in a manner consistent with City goals and policies.

11. PROGRESS

Law Firm is responsible for keeping the Responsible Attorney and/or his/her duly authorized designee informed on a regular basis (not less than quarterly) regarding the status and progress of the Legal Services, activities performed and planned, and any meetings that have been scheduled or are desired.

12. INSURANCE

12.1 Without limiting Law Firm's indemnification of City, and prior to commencement of Legal Services, Law Firm shall obtain, provide and maintain at its own

expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

12.2 Proof of Insurance. Law Firm shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

12.2.1 Law Firm shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Legal Services hereunder by Law Firm, its agents, representatives, employees or Law Firms. The cost of such insurance shall be included in Law Firm's proposal.

12.3 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

12.4 Coverage Requirements.

12.4.1 Workers' Compensation Coverage. Law Firm shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Law Firm's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Law Firm shall require each approved associated legal firm to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the Law Firm's employees.

12.4.1.1 Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change.

12.4.1.2 Law Firm shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

12.4.2 General Liability Coverage. Law Firm shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

12.4.3 Automobile Liability Coverage. Law Firm shall maintain automobile insurance covering bodily injury and property damage for all activities of the Law Firm arising out of or in connection with Legal Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

12.4.4 Professional Liability (Errors & Omissions) Coverage. Law Firm shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) limit per claim and in the aggregate.

12.5 Other Insurance Provisions or Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

12.5.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Law Firm or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Law Firm hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its Law Firms.

12.5.2 Enforcement of Agreement Provisions. Law Firm acknowledges and agrees that any actual or alleged failure on the part of the City to inform Law Firm of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

12.5.3 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type which Law Firm may choose in its discretion to obtain.

12.5.4 Notice of Cancellation. Law Firm agrees to provide City with notice in the event Law Firm receives notice of cancellation or nonrenewal of coverage for each required coverage.

12.6 Timely Notice of Claims. Law Firm shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Law Firm's performance under this Agreement.

12.7 Additional Insurance. Law Firm shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment and in its own discretion may be necessary for its proper protection and prosecution of the Legal Services.

13. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Legal Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Law Firm, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Law Firm is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Law Firm. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

14. ASSOCIATION OF COUNSEL

Law Firm may associate additional counsel to assist with Legal Services under this Agreement if, in Law Firm's professional judgment, such association is necessary to adequately represent the City's interests and if City consents to the association in writing.

15. OWNERSHIP OF DOCUMENTS

15.1 Each and every completed report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Law Firm, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the property of City. Law Firm shall, at Law Firm's expense, provide one (1) copy of such Documents to City upon prior written request.

15.2 Documents prepared by Law Firm pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others for any other Legal Services. Any use of completed Documents for other Legal Services and any use of incomplete Documents without specific written authorization from Law Firm will be at City's sole risk and without liability to Law Firm. Further, any and all liability arising out of changes made to Law Firm's deliverables under this Agreement by City or persons other than Law Firm is waived against Law Firm and City assumes full responsibility for such changes unless City has given Law Firm prior notice and has received from Law Firm written consent for such changes.

16. COMPUTER DELIVERABLES

All electronically transmitted Documents shall be transmitted to City in Microsoft Word, Excel or Adobe portable document file (.pdf) format.

17. CONFIDENTIALITY

All Documents, including drafts, notes and communications that result from the Legal Services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

18. RECORDS

18.1 Law Firm shall keep records and invoices in connection with the Legal Services to be performed under this Agreement. Law Firm shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Legal Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Law Firm under this Agreement for the Legal Services rendered. All such records and invoices shall be clearly identifiable. Law Firm shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Law Firm shall allow inspection of all Legal Services, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Law Firm under this Agreement for such Legal Services rendered.

19. WITHHOLDINGS

City may withhold payment to Law Firm of any disputed sums until satisfaction of the dispute with respect to such payment while tendering payment of all undisputed sums in a timely manner. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Law Firm shall not discontinue Legal Services as a result of such withholding. Law Firm shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Law Firm shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

20. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the professional negligence of the Law Firm which result in expenses to City greater than what would have resulted if there were not errors or omissions in the Legal Services accomplished by the Law Firm, the additional expense shall be borne by the Law Firm. Nothing in this section is intended to limit City's rights under the law or any other sections of this Agreement.

21. CITY'S RIGHT TO EMPLOY OTHER LAW FIRMS

City reserves the right to employ other Law Firms in connection with the Legal Services.

22. CONFLICTS OF INTEREST

22.1 The Law Firm or its employees may be subject to the provisions of the California Political Reform Act of 1974 ("Act"), which (1) requires such persons to disclose

any financial interest that may foreseeably be materially affected by the Legal Services performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

22.2 If subject to the Act, Law Firm shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Law Firm shall indemnify and hold harmless City for any and all claims for damages resulting from Law Firm's violation of this section.

23. NOTICES

23.1 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third (3rd) business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided, or via facsimile transmission. All notices, demands, requests or approvals from Law Firm to City shall be addressed to City at:

Attn: Aaron C. Harp, City Attorney
City Attorney's Office
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658
Phone: (949) 644-3131

23.2 All notices, demands, requests or approvals from City to Law Firm shall be addressed to Law Firm at:

Attention: Susan Yount Apy, Esq.
Kane, Ballmer & Berkman
515 South Figueroa Street, Suite 1850,
Los Angeles, California 90071

Phone: (213) 452-0125

24. CLAIMS

The Law Firm and the City expressly agree that in addition to any claims filing requirements set forth in the Agreement, the Law Firm shall be required to file any claim the Law Firm may have against the City in strict conformance with the Government Claims Act (Cal. Govt. Code §§ 900 *et seq.*).

25. TERMINATION

25.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in

default in the performance of this Agreement. If such default is not cured within a period of three (3) calendar days of receiving notice of default, non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof. If more than three (3) calendar days are reasonably required to cure the default, the defaulting party shall give the non-defaulting party adequate assurance of due performance within three (3) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter shall diligently take steps to cure the default. If the defaulting party fails to give such notice or fails to diligently pursue the steps necessary to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

25.1.1 Notwithstanding the above provisions, City and Law Firm within its obligations under the Professional Rules of Conduct, shall each have the right, at their sole discretion and without cause, to terminate this Agreement at any time by giving seven (7) calendar days prior written notice to the other. In the event of termination under this Section, City shall pay Law Firm for Services satisfactorily performed and costs incurred up to the effective date of termination for which Law Firm has not been previously paid. On the effective date of termination, Law Firm shall deliver to City all reports, documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form that are requested by City and that have not been previously forwarded.

26. STANDARD PROVISIONS

26.1 Compliance with all laws. Law Firm shall at its own cost and expense comply with all applicable statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Legal Services prepared by Law Firm shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Responsible Attorney and City.

26.2 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

26.3 Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

26.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

26.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or

against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

26.6 Amendments. This Agreement may be modified or amended only by a written document executed by both Law Firm and City and approved as to form by the City Attorney.

26.7 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26.8 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

26.9 Termination of Previous Agreements. Upon the Effective Date of this Agreement any previous agreement(s) between City and Law Firm shall terminate and be of no further affect. Within ten (10) calendar days of the Effective Date of this Agreement Law Firm shall provide the Responsible Attorney with a list of pending matters the Law Firm is currently working upon on behalf of the City. The Responsible Attorney will review the list of pending matters submitted by Law Firm and issue written request(s) (as provided in Section 2) for those matters the Responsible Attorney desires Law Firm to continue to provide Legal Services.

26.10 Equal Opportunity Employment. Law Firm represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

26.11 No Attorneys' Fees. In the event of any action or litigation arising under this Agreement the prevailing party shall not be entitled to attorneys' fees.

26.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/1/11

By: [Signature]
Michael Torres
Deputy City Attorney

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: 11-1-11

By: [Signature]
Aaron C. Harp
City Attorney

ATTEST:
Date: 11-2-11

By: [Signature]
Leilani I. Brown
City Clerk



LAW FIRM: Kane, Ballmer & Berkman,
A law corporation

Date: 10-26-11

By: [Signature]
Murray O. Kane

Date: 10-26-11

By: [Signature]

Attachments:

Exhibit "A" – List of Personnel and Billing Rates
Exhibit "B" – Outside Counsel Billing Guidelines

[END OF SIGNATURES]

EXHIBIT "A"

HOURLY RATES

Title	Hourly Rate
Murray O. Kane	\$350.00
Senior Principal & Principal	\$275.00
Senior Counsel	\$275.00
Senior Associate\$	225.00
Associate	\$200.00
Paralegal	\$150.00
Legal Assistant	\$125.00

EXHIBIT "B"

1. Policy:

Outside counsel services are to be provided to the City of Newport Beach effectively and efficiently. The City Attorney's Office ("CAO") retains outside counsel on an as needed basis to address the legal needs of the City. We seek practical, solution-oriented services. Services are to be realistically tailored to the task assigned and performed in an efficient, capable manner. The goal of these guidelines is to set out staffing and billing requirements to effectuate this policy. All billings must be consistent with these guidelines.

2. Billing Rates:

Acceptable rates shall be established and confirmed prior to commencement of work on any assigned matter. Written notice must be given of the intent to increase rates at least ninety (90) days prior to the effective date of the rate increase. Rates may be increased no more often than once in a twelve (12) month cycle.

3. Approved Legal Team and Professional Staffing:

Each subject of outside counsel service must have an approved legal team. No billing will be accepted from any individual who is not part of the approved legal team. Depending on the complexity of the matter, the team could be as few as one attorney to as many legal professionals as the legal team requires. No matter the size of the approved team, the City shall assign matters to one responsible attorney. That individual shall be responsible for the quality of the work performed and the efficiency of the billings.

Generally, the following rules shall apply to the utilization of billing professionals on City legal matters:

- Legal work should be given to the least expensive billing professional qualified to perform the work. The City encourages the use of paralegals in a manner consistent with the paralegal's experience and skill level. Paralegals are ideally suited for performing the legal aspects of investigation, document management, and discovery, as well as focused research of procedural legal issues.
- No more than one legal professional may make an appearance or attend an event, absent prior approval by the City; Replacement billing professionals must familiarize themselves with the assigned matter at outside counsel's expense. The City will not pay for new legal team members "getting up to speed" in an assigned matter.

- Legal professional shall not bill for support, clerical, or other administrative support services unless caused by the actions of City and approved by City in advance.

4. Legal Research

Outside counsel are chosen based upon their knowledge and skill in particular areas of the law. Generally, therefore, extensive legal research should not be necessary. On the other hand, the City recognizes that each assignment has its own unique circumstances and those circumstances may require extensive legal research to be performed. No legal research beyond three (3) hours, however, is authorized absent previous approval by the CAO. Any billing for legal research beyond the three (3) hour maximum that has not been previously authorized by the CAO will be reduced to the three (3) hour maximum. Legal research includes the research of the issue and the drafting of any memorandum or similar document related to the research. A copy of the work product based upon the research must be provided to the CAO.

5. Conferences:

It is generally not acceptable to bill multiple firm attorneys in meetings and conferring internally, whether face to face or through electronic means. If internal firm conferences occur, absent prior approval to the contrary, only the most senior attorney may bill his/her time. No junior attorney may bill the time for the conference. The City recognizes, however, that in complex matters conferences or team meetings may be necessary on a periodic basis to achieve the efficient handling of a matter. In those circumstances, if previously authorized, periodic conferences may be billed by all billing professionals in attendance. The conferences must be structured to be efficient, and provide significant benefit to the handling of the matter. Any billing of internal conferencing or communication must be broken out and fully itemized so that the amount of time spent on the communication can be identified with specificity.

6. Acceptable Costs

General overhead costs are considered to be covered by the hourly rate billed by the legal professionals and are not billable to the City. As such, library, monthly legal research data base expense, clerical support and typing unless authorized per section 3 above, and other similar expenses, are all considered to be part of overhead and thus covered by the hourly rate charged on a matter. Internal costs and out of pocket costs specific to a City matter may, however, be billed at the actual cost incurred or at the best approximation of that cost. Authorization must be obtained from City prior to incurring a cost in excess of \$250.

The following are costs acceptable for billing:

- a. **External out of pocket costs:** Those costs incurred from service providers outside of counsel's office will either be paid directly by the City or reimbursed at actual cost incurred. These costs and expenses

commonly include investigation costs, expert witness fees, process service fees, jury fees, certification expenses, court and deposition reporter and transcript expense, court filing fees, document filing fees and travel expenses. Costs in excess of \$1,000.00 may be forwarded directly to the City for payment directly by the City. Advance deposits may be provided by the City if necessary and if the City is provided sufficient time in advance in order to process the request.

- b. **Internal Costs:** Internal costs that are actually incurred are reimbursable at the best approximation of the expense. The following are acceptable approximations:

- Standard duplication expense or photocopying at .15p per page;
- Color duplication or photocopying expense .50p per page;
- Compact disc duplication \$20.00 per disc.

- c. **Delivery Expenses:** Delivery expenses are recognized as an appropriate billable cost. The City will reimburse the expenses incurred in delivering materials as necessary within the handling of an assignment. Counsel, however, shall avoid the need for express delivery and the City will not reimburse for express delivery that is necessitated solely due to counsel's failure to handle a matter in a more timely fashion.

Copies of invoices for all costs in excess of \$250 shall be forwarded to the City prior to City reimbursement and the City reserves the right to examine all invoices for billed costs prior to reimbursement.

7. Billing Format:

The following billing format features are required:

- a. **Billing Period:** Bills shall be generated no more often than monthly.
- b. **Summary Statement:** Where outside counsel is handling more than one matter for the City, outside counsel shall provide the City a summary statement identifying all invoices being billed in a month, giving the total amount billed on each invoice and the total billed by outside counsel in the billing period.
- c. **Itemization:** Block billing is not acceptable. Each bill must be itemized in sufficient detail so that the City can identify the amount of time spent on a particular task performed by each billing professional. Therefore, you should itemize essentially the task by billing professional on a daily basis. For example, if there is legal research performed regarding a motion and drafting of the motion in one day that time can billed

together. As stated above, however, any internal conferences must be fully itemized.

- d. **Minimum Billing:** 0.1 hour (6 minutes) shall be the minimum billing increment. The City does not accept higher minimum billing increments.
- e. **Biller Identified:** The legal services provider must be identified in the item billed. No legal services professional will be accepted as a biller absent that individual being an approved legal team member.
- f. **Recap of Billings:** Professional services must be summarized at the end of the billing. The summary must identify the professional service provider, the amount of time spent, the rate charged, and the total amount billed for services from that professional service provider.
- g. **Cost Billings:** All costs must be clearly identified and the reasons for their being incurred given.

8. **Audit:**

The City reserves the right to conduct a file and billing audit on any legal matter it refers to outside counsel.

9. **Litigation Matters:**

The City requires that a Litigation Plan and Cost Estimate ("Plan") be prepared and updated in all litigation matters handled by outside counsel. Outside counsel shall utilize the form provided by the City in preparing the Plan. Outside counsel may execute the actions in the Plan once it is approved by the City. Outside counsel must obtain prior authority from the City before engaging in any activity that is not proposed in the Plan. Outside counsel must always obtain express authority from City prior to:

- Filing any challenge to any pleading, either through demurrer or motion;
- Filing any cross-complaint or cross-claim;
- Initiating any law and motion proceeding;
- Engaging in affirmative discovery; or
- Proceeding with any writ action or appeal;

The City recognizes that a Plan provides only a cost estimate and is not definitive of the actual cost that will be incurred. The Plan can, and should, be updated if or when it appears to be inadequate to achieve the City's goals in the litigation. The City expects outside counsel to update the Plan at critical points within the case. Outside counsel shall update the Plan ninety days before trial, laying out the plan for all final discovery, experts, and trial.

A09-00224/OSCN billing guidelines Exhibit B for LSA